No. 89-1276

FILED
APR 27 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1989

DEBBIE BLOMMAERT,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The
Appellate Court Of Illinois,
Third Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

NEIL F. HARTIGAN
Attorney General
State of Illinois

ROBERT J. RUIZ
Solicitor General
State of Illinois

TERENCE M. MADSEN
NATHAN P. MADDOX*
Assistant Attorneys General
500 South Second Street
Springfield, IL 62706
(217) 782-9054

Attorneys for Respondent

*Counsel of Record

BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

Whether the Appellate Court of Illinois, when affirming petitioner's conviction, correctly applied the harmless error analysis which this Court set forth in *Chapman v. California*, 386 U.S. 18 (1967), and applied to questions concerning the denial of the right to cross-examine for bias in *Delaware v. Van Arsdall*, 475 U.S. 673 (1986).

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 2

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE APPELLATE COURT OF ILLINOIS, WHEN AFFIRMING PETITIONER'S CONVICTION, CORRECTLY APPLIED THE HARMLESS ERROR ANALYSIS WHICH THIS COURT SET FORTH IN *CHAPMAN V. CALIFORNIA*, 386 U.S. 18 (1967), AND APPLIED TO QUESTIONS CONCERNING THE DENIAL OF THE RIGHT TO CROSS-EXAMINE FOR BIAS IN *DELAWARE v. VAN ARSDALL*, 475 U.S. 673 (1986) 2

CONCLUSION 8

TABLE OF AUTHORITIES

Page

CASES

Chapman v. California, 386 U.S. 18 (1967) 2, 4, 5, 6

Delaware v. Van Arsdall, 475 U.S. 673 (1986) 2, 5, 6

People v. Blommaert, 184 Ill.App.3d 1065 ..... 2, 3, 5

People v. Foley, 109 Ill.App.3d 1010 .....5, 6

No. 89-1276

In The

Supreme Court of the United States

October Term, 1989

DEBBIE BLOMMAERT,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The
Appellate Court Of Illinois,
Third Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

JURISDICTIONAL STATEMENT

The jurisdictional requisites are adequately set forth in the petition. However, as treated more fully by the argument set forth herein, respondent does not believe petitioner has shown any reason for this Court to exercise its sound judicial discretion to grant the writ.

STATEMENT OF THE CASE

Petitioner, Debbie Blommaert, was found guilty of the first degree murder of her 10 month old adopted daughter and was sentenced to twenty years imprisonment. Petitioner's conviction was affirmed on appeal to the Appellate Court of Illinois, Third Judicial District, in *People v. Blommaert*, 184 Ill.App.3d 1065, 541 N.E.2d 144 (3rd Dist. 1989). Petitioner's Petition for Leave to Appeal to the Illinois Supreme Court was denied. Thereafter, petitioner filed the instant petition for writ of certiorari.

STATEMENT OF FACTS

A thorough summation of the evidence presented at petitioner's trial was included in the appellate court decision affirming petitioner's conviction. This summary of the facts appears in the appendix to the petition at pp. A-1 – A-23.

REASONS FOR DENYING THE WRIT

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE APPELLATE COURT OF ILLINOIS, WHEN AFFIRMING PETITIONER'S CONVICTION, CORRECTLY APPLIED THE HARMLESS ERROR ANALYSIS WHICH THIS COURT SET FORTH IN *CHAPMAN v. CALIFORNIA*, 386 U.S. 18 (1967), AND APPLIED TO QUESTIONS CONCERNING THE DENIAL OF THE RIGHT TO CROSS-EXAMINE FOR BIAS IN *DELAWARE V. VAN ARSDALL*, 475 U.S. 673 (1986).

Petitioner, Debbie Blommaert, alleges that she was denied her right to confront prosecution witness Pamela

Vraney when the trial court prohibited cross-examination of Vraney on an issue which was offered to show bias. Petitioner was charged with having murdered her ten month old adopted daughter, Amy. In the state's case-in-chief, Vraney testified to a prior incident in which petitioner had abused petitioner's 4 year old son, Justin. This testimony was offered for the limited purpose of establishing petitioner's intent or absence of mistake with regard to Amy's death. Vraney also testified for the State in rebuttal, relating to a prior incident in which she had observed a bruise on Amy's face and petitioner's comments that petitioner was worried about a social worker seeing the bruise. *People v. Blommaert*, 184 Ill.App.3d 1065, 1069, 1071, 541 N.E. 2d 144, 147-149 (3rd Dist. 1989).

During cross-examination of Vraney, petitioner sought to question Vraney about a dispute between petitioner's husband and Vraney's husband concerning allegedly unsatisfactory masonry work performed by petitioner's husband on the Vraney home. As a result of this incident, Vraney's husband was engaged in a civil suit against petitioner's husband and had filed a complaint with the Illinois Attorney General's Office. Vraney admitted that she prepared and filled the necessary papers for the suit, but did not sign them because her duties at home might prevent her from appearing in court. Vraney also stated that prior to this incident she and her husband had been friends with petitioner and her husband, but they no longer had any relationship, good or bad. The trial court did not allow cross-examination on this issue because the civil suit was between Vraney's husband and petitioner's husband. *People v. Blommaert, supra*, 184 Ill.App.3d at 1074, 541 N.E.2d at 150.

On direct appeal of the conviction the Illinois Appellate Court found that this limitation on cross-examination was error. However, upon review of the record the appellate court found that the error was harmless. Petitioner now alleges that the appellate court utilized an improper standard when reviewing this error and, therefore, urges this Court to grant certiorari. An examination of the appellate court's decision reveals that the granting of certiorari is unnecessary in this case. The appellate court applied the correct harmless error standard.

In *Chapman v. California*, 386 U.S. 18 (1967), this Court held that not all federal constitutional errors automatically entitled a defendant to a reversal of his or her conviction. 386 U.S. at 22. This Court held that such error could be found harmless, however, "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." 386 U.S. at 24. In *Delaware v. Van Arsdall*, 475 U.S. 673 (1986), this Court addressed the applicability of the *Chapman* harmless error standard to cases involving denial of a right to cross-examine for bias. This Court found that the denial of the opportunity to cross-examine an adverse witness for bias does not fit within the limited category of constitutional errors that are deemed prejudicial in every case. 475 U.S. at 672. This Court went on to state: "Accordingly, we hold that the constitutionally improper denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation Clause errors, is subject to *Chapman* harmless-error analysis. The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say

that the error was harmless beyond a reasonable doubt." 475 U.S. at 684.

In addressing petitioner's allegation that she was improperly denied the opportunity to cross-examine Vraney concerning bias, the appellate court stated: "Upon a careful review of the record, we find that any error was harmless beyond a reasonable doubt, and neither reversal of defendant's conviction nor a new trial is required." *People v. Blommaert*, *supra*, 184 Ill.App.3d at 1075, 541 N.E.2d at 151. In support of this holding, the appellate court cited the decision in *People v. Foley*, 109 Ill.App.3d 1010, 441 N.E.2d 655 (2nd Dist. 1982). The *Foley* decision also dealt with the denial of a right to cross-examine a witness concerning bias. While *Foley* predated *Van Arsdall*, the *Foley* court had applied the *Chapman* standard to the denial of the right to cross-examine concerning bias. "The standard of review of an error affecting a Federal constitutional right is whether it was harmless beyond a reasonable doubt, that is, whether there is a reasonable possibility that the error might have contributed to the accused's conviction. . . . *Chapman v. California* (1967), 386 U.S. 18[.]" *People v. Foley*, *supra*, 109 Ill.App.3d at 1016, 441 N.E.2d at 659-60. By the plain language of its decision and by its reliance on *Foley*, the appellate court in affirming petitioner's conviction applied the *Chapman* harmless error standard, just as this Court instructed in *Van Arsdall*. Thus, petitioner's argument that an improper standard of review was utilized by the appellate court has no merit.

In light of this plain reliance on the appropriate standard, petitioner's argument that an inappropriate standard was applied is presumably based upon the fact

that the appellate court did not specifically enumerate its findings with respect to certain factors set forth in *Van Arsdall*. After finding that the *Chapman* harmless error analysis was applicable to the denial of the right to cross-examine a witness concerning bias, this Court went on to state: "Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." *Delaware v. Van Arsdall, supra*, 475 U.S. at 684.

This Court did not hold, or even suggest, that a reviewing court must detail its findings with respect to each of these five factors in any opinion addressing the denial of the right to cross-examine for bias. This language from *Van Arsdall* merely indicates what factors should be considered and demonstrates that these factors are susceptible to appellate review. When an appellate court states that it has made a careful review of the record and has found that there is no reasonable possibility that the error contributed to a defendant's conviction, the defendant has had the benefit of the review mandated by *Van Arsdall*. Through the language of its decision and through its reliance on *People v. Foley*, the appellate court has made exactly this statement in the instant case.

Nonetheless, petitioner sets forth the five factors listed in *Van Arsdall* and argues that upon considering these factors the appellate court should have found in her

favor. While respondent disagrees with petitioner's assessment of these factors, the relative merit of the arguments with respect to these factors is irrelevant to the question before this Court. Petitioner has petitioned for certiorari on the claim that the wrong test was applied – not on the clajm that the right test was applied but the wrong result achieved.

While the appellate court held that petitioner was erroneously denied the right to cross-examine Vraney concerning bias, that error does not automatically entitle petitioner to a new trial. Upon reviewing that error the appellate court applied the standard mandated by this Court and found the error was harmless beyond a reasonable doubt. Because the appellate court applied the correct standard for review, this Court should deny certiorari.

CONCLUSION

For all of the foregoing reasons, respondent respectfully requests that this Honorable Court deny the Petition for Certiorari filed in this cause.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General
State of Illinois

ROBERT J. RUIZ
Solicitor General
State of Illinois

TERENCE M. MADSEN
NATHAN P. MADDOX*
Assistant Attorneys General
500 South Second Street
Springfield, Il 62706
(217) 782-9054

Attorneys for Respondent.

*Counsel of Record